Rao Sahib K. Achyuta Menon *(Secretary to Government):* With regard to companies it is 2½ annas in the rupee. Here it is only 2 annas in the rupee.

On the first Rs. 1,500 of total income in the case of every individual, Hindu undivided family, etc., nil in British India as is the case here.

On the next Rs. 3,500 of total income 9 pies. Here it is 8 pies.

On the next Rs. 5,000 of total income one anna three pies. Here it is only one anna.

On the next Rs. 5,000 of total income 2 annas in British India. Here it is one anna six pies.

On the balance of total income 2 annas 6 pies in British India. Here it is 2 annas.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendment put and carried

Clause 2

Clause 2 put and carried

Clause 1, Title and preamble put and carried

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move that Standing Order No. 32 be suspended and that the Bill may be taken up and finally passed to-morrow.

Motion put and carried

RESOLUTIONS

Resolution No. 6—*(cont.)*

Giving the benefit of instalment payment before decree to secured debts.

"This Council recommends to the Government that the Cochin Civil Procedure Code should be so amended as to give the benefit of instalment payment before decree to secured debts also."

[Mr. P. Achyuta Menon]

*Mr. M. Sivarama Menon** *(Advocate-General):* Sir, Government oppose the resolution. Already, provision exists in the Civil Procedure Code for the execution of the decree. After the passing of the decree, even the court has not power to give the

*Speech not corrected by the hon'ble member.

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benefit of instalment system of payment. The present resolution aims at empowering the courts to grant instalment payment even in mortgage debts also. That is the position. My first objection is that in all bonafide cases where the mortgage debt is attempted to be paid by judgment debtors, there is ample power vested in the courts to grant time. I only wish to invite the attention of the House to Order 34, rule 5 of the Civil Procedure Code: "That the court may, upon good cause being shown and upon such terms, if any, as it thinks fit, postpone the date fixed for payment under this order from time to time" If there is a mortgage decree for payment of mortgage money, if the judgment debtor is able to show satisfactory grounds as to why he has not been able to pay that money and that he is making honest attempts to pay the money, the court has been given the right to grant him further time from time to time. The court has got power to grant such a concession whenever a reasonable case has come to notice of the court. Even without this section, there is another general section 119 of the Code which says: "Where any period is fixed or granted by the court for the doing of any Act prescribed or allowed by this Code, the court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired." This power is exercised by the Court from time to time for proper reasons in the case of mortgage decrees. Under the Civil Procedure Code which is the law here, decree debts will provide that if you do not pay within three or four months, up to a limit of six months, then only your property has to be proceeded against. No personal execution also will be allowed. That is already a concession extended by the new Civil Procedure Code by which the judgment debtor gets time even at the time the decree is passed. If within that time, anybody appears for the party and pleads for more time to be granted, the court will mention in the decree the maximum time allowed. If it is not possible for him to find money for the payment of the mortgage debts, then he can get the time further extended. The only thing is there must be satisfactory reason to show as to why he has not been able to discharge the debt in whole or in part. Does not this resolution speak of something else? The aim can only be to facilitate payment of these debts by enabling the judgment debtor to find money for payment either in small portions or in large portions. He will get time only if proper reasons are shown. My submission to the House is that there is sufficient protection to the judgment debtor in a mortgage decree.

There is another reason also on which Government oppose this resolution. Suppose the property is subject to more than one mortgage. Then the other mortgagees will have to wait until the first

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mortgagee is sued upon, or they will have to rush to the court and seek the benefit of instalment decree in their turn. Or else they will have to accept the instalment payment. That will be possible only when the number of mortgages is only so few and the value of the property is sufficient to discharge all those properties with all the interest thereof. In such cases, he will be able to find other mortgagees or persons who will be able to help him and he can apply to the court to enable him to dispose of his property and pay up the debts. Where justice demands that judgment debtors should be given time, the court has been given power. One essential thing to which the mortgagee looks to is the value of the property. That is so in the majority of cases. There may be some cases where, even though the value of the property is less, he may look to the person at the time when the money is advanced. Generally there will be cases where one-third of the value of the property is advanced as mortgage money. There may be cases where on account of the accumulated defaults of the debtors, the charge upon the property becomes so heavy that even the other mortgagees lose their money unless and until they take care to reduce the property to their care by paying the prior mortgagee also straight-a-way. It is on account of these considerations that the Civil Procedure Code has very correctly vested the power in the courts, but that power has not been given in respect of mortgages. This principle has not been accepted. Government therefore are constrained to oppose this resolution.

Mr. A. V. Moothedan *(Chalakkudi):* I support this motion. By supporting the motion, I do not say that the period should be extended to 40 or 50 years. What I say is, it should be extended to a reasonable period. That is also Mr. Achyuta Menon's view. The Advocate-General said that the Court has ample powers; but the court does not give more than two or three years. If the party has deposited a certain amount at least six months' time may be given. Suppose a party deposits one anna in the rupee. Why should he not be given six months' time? By granting time like this no hardship is caused nor will there be any revolution. In the neighbouring State of Travancore longer periods are allowed for repayment of debts. Here at least six years' time may be given. The idea is that the debtor should be given some breathing time. When you legislate why not make provision for that? The Advocate-General pointed out some difficulties. All these we need not consider at this stage. The details we are not going to discuss now. With this suggestion I support this motion.

Mr. K. Kochukunhan Kaimal *(Vadakkancheri):* The underlying idea is to enable the judgment debtor to get time by disposing

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of the property or by making any other arrangement. Now, as a matter of fact, from our experience it is being felt that the Government have given sufficient powers to the courts to give time where there is justification and to grant such extension for the payment of the amount without prejudice to the latter. In cases where it is not possible for the mortgagor to raise the money there is no use of giving time, for the consequence of that will be disastrous to the subsequent mortgagees also. So that my submission is that in so far as the courts are inclined to take a lenient view of the position of the parties, extension of time is being invariably granted by all the courts of the State. There is absolutely no fear of the property being sold immediately in proper cases. Then the principle which underlies the provision in instalment decrees is different in the case of personal decrees. Time is given to enable the person of the judgment debtor to find out money by selling his property or by making any other arrangement. The decree holder looks to the solvency of the judgment debtor. It is the credit, the personal credit that is looked into. In such cases it is only proper that the Court gives time to the judgment debtor to enable him to find out money. In the case of mortgage decrees it is not so much the credit of the person but it is the value of the property that is being looked into. So that when the security is sufficient there is absolutely no fear because there is ample time. When the security is not sufficient for full payment of one decree holder and also other subsequent mortgagees, certainly it will work great hardship upon the subsequent mortgagees also. By the grant of time, 5 years or 6 years, to the judgment debtor, the others will have to wait till the amounts are paid to the decree holder, so that this will work very great hardship as against the person who held subsequent mortgages upon the same properties. Further, the property has to be kept in tact. The value of the security should not be diminished. Suppose during the course of six years, the security becomes insufficient. That will also work very great hardship as against the decree holder. My submission therefore is there is no justification to apply the same concession to the case of mortgage decree holders. Further, it will work prejudicially in several ways which cannot be placed now before the House. I submit the resolution cannot therefore be accepted.

മിസ്റ്റർ സി. വി. ഇയ്യു: ബഹുമാനപ്പെട്ട അഡ്വാക്കെറ്റ് ജനറൽ അവർകൾ പറഞ്ഞ സമാധാനമന്വസരിച്ചു് യാതൊന്നും കോടതികൾ പ്രായോഗികമായി ചെയ്യുവരുന്നില്ല. കോടതിക്കു അധികാരമുണ്ടെന്നു പറയാമെന്നല്ലാതെ കോടതികൾ അധികാരം പ്രയോഗിക്കുന്നതായി കാണുന്നില്ല. അതിനു നിയമഭേദഗതി ചെയ്യുയൊ അല്ലെങ്കിൽ ഹൈക്കോടതിയിൽനിന്നും വിശദമായും കർശനമായും ഉള്ള ഒരു സർക്കുലർ അയക്കുകയൊ ചെയ്യണം. ഈ പ്രമേയം ഗവമ്മെണ്ടു് സ്വീകരിക്കുന്നപക്ഷം ബഹുമാനപ്പെട്ട ഹൈക്കോടതിയിൽനിന്നും ഓരോ ന്യായാധിപന്മാർക്കും പ്രത്യേകിച്ചു് നിഷ്കർഷവെക്കത്തക്കവണ്ണമുള്ള കല്പന കൊടുത്താ

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ലല്ലാതെ കാര്യം നടക്കയില്ല. കോടതിക്കു് അധികാരമുണ്ടെന്നും മറ്റും പറഞ്ഞതുകൊണ്ടു് ഒരു പ്രയോജനവുമില്ല. ന്യായാധിപന്മാർ ന്യ ൦ ൦-ം ൫ ൦ ൦-ം, ന ൦ ൦-ം ഉറുപ്പിക പ്രതിമാസം ശമ്പളം വാങ്ങിക്കുന്നവരാണു്. അവക്കു് കർഷകന്മാരുടെ സങ്കടങ്ങൾഎന്തൊക്കെയാണെന്നറിഞ്ഞുകൂടാ. ഈ പ്രമേയത്തിന്റെ അംഗീകരണം കർഷകർക്കു വളരെ ആവശ്യമായിട്ടുള്ള ഒന്നാണു്. ഈ പ്രമേയം പ്രായോഗിക രൂപത്തിൽ വരുത്തുന്നപക്ഷം അതു് കർഷകർക്കു ഈ ഘട്ടത്തിൽ അത്യന്താപേക്ഷിതമായ ഒരു രക്ഷയായിരിക്കും. കർഷകാശ്വാസ നിയമത്തിന്റെ തത്വത്തെ വിപുലീകരിക്കുന്നതായ ഒരു പ്രവൃത്തിമാത്രമാണിതു്.

വസ്തുക്കളുടെ വില താഴ്ന്നതിനെപ്പറ്റി പറയുകയുണ്ടായി. അതിനു കാരണം ഇവിടെ പറഞ്ഞതൊന്നുമല്ല. ചിലപ്പോൾ സാമ്പത്തികാധിപത്യമായിരിക്കാം. അല്ലെങ്കിൽ മൈക്രോൺകൊണ്ടും യുദ്ധംകൊണ്ടും വന്നിട്ടുണ്ടു്. അതെങ്ങിനെയായാലും കടത്തിൽ എന്തെങ്കിലും ഒരു ചെറിയസംഖ്യ ഒഴിവായി കിട്ടിയാൽ അതു് കടക്കാക്കുവലുതായ ഒരു രക്ഷയാണു്. അതുകൊണ്ടു് ഈ കാര്യത്തിൽ നീതിയും ന്യായവും ദയവും കോടതിക്കു് ഒരുപോലെ തോന്നത്തക്ക വിധത്തിൽ ഈ പ്രമേയം ഗവർമ്മെണ്ടു സ്വീകരിച്ചു അതിനനുരൂപമായി നിയമത്തിൽ ഭേദഗതി ചെയ്യണം. ബഹുമാനപ്പെട്ട അഡ്വാക്കെറ്റ് ജനറൽ അവർകളും ഇവിടെ പറഞ്ഞ സമാധാനം തീയറി (Theory) മാത്രമാണു്; പ്രായോഗികമല്ല. അതുകൊണ്ടു് ഈ പ്രമേയത്തെ ഈ സഭ ഐകകണ്ഠ്യേന പാസാക്കണമെന്നുള്ള അപേക്ഷയോടുകൂടി ഞാൻ ഹാർദ്ദമായി പിൻതാങ്ങുന്നു.

മിസ്റ്റർ കെ. എസ്സ്. പണിക്കർ: ബഹുമാനപ്പെട്ട കാട്ടർ മെമ്പർ ശ്രീമാൻ പുതൂർ അച്യുതമേനോൻ അവർകളും ഇവിടെ അവതരിപ്പിച്ചതായ ഈ പ്രമേയത്തെ ബഹുമാനപ്പെട്ട അഡ്വൊക്കേറ്റ് ജനറൽ അവർകളും എതിർത്തതിൽ ഞാൻ വ്യസനിക്കുന്നു. ഗവർമ്മെണ്ടിന്റെ നീതിന്യായം പരിരക്ഷിക്കുവാനുള്ള ഒരു ഉദ്യോഗസ്ഥൻ ഗവർമ്മെണ്ടിന്റെ ആദായത്തിനും ക്ഷേമത്തിനും ഉപരുപകൽ പ്രവൃത്തിപ്പാൻ ഉത്തരവാദപ്പെട്ടവരിൽ ഒരാൾ ഗവർമ്മെണ്ടിനു ആദായമുള്ളതും, സാധുകർഷകരെ രക്ഷിക്കുന്നതിനു് ആവശ്യമായിട്ടുള്ളതുമായ ഈ പ്രമേയത്തെ എങ്ങിനെ എതുക്കുമെന്നാണു് ഞാൻ ചോദിക്കുന്നതു്. ബഹുമാനപ്പെട്ട വടക്കാഞ്ചേരി മെമ്പർ ശ്രീമാൻ കൈമൾ ഒരു ജന്മിയായതുകൊണ്ടു് അദ്ദേഹത്തിന്റെ എതിർപ്പു് ഒരുവിധത്തിൽ സാധുകരിക്കുവാൻ അവകാശമുണ്ടു്. അദ്ദേഹത്തിന്റെ വിചാരം പണയാധാരം എഴുതി വാങ്ങിയാൽ ആയിരം ഉറുപ്പിക കടം കൊടുത്തിട്ടുണ്ടെങ്കിൽ ൧,൦൦൦ ഉറുപ്പികക്കുള്ള വസ്തു ലേലത്തിൽ വിൽപിച്ചു് സന്നതാക്കാമെന്നുള്ളതാണു്. ആ ഉദ്ദേശം അദ്ദേഹത്തിന്റെ നിലയിൽ സാധുകരിക്കത്തക്കതാണു്. ഇൻസ്റ്റാൾമെൻറ് പേയ്മെൻറ് ആക്കിയാൽതന്നെ ഈ കാലസ്ഥിതിക്കു നിശ്ചിതദിവസങ്ങളിൽ സംഖ്യ കൊടുക്കുവാൻ അധികംപേർക്കും സാദ്ധ്യമല്ലാത്തതുകൊണ്ടു് ആ വഴിക്കു് പ്രത്യേകം ഒരു ആദായം ഗവർമ്മെണ്ടിനുണ്ടാകുന്നതാണു്. നടപടി നടത്തുമ്പോൾ സ്റ്റാമ്പിനും മറ്റുമുള്ള ആദായം ഗവർമ്മെണ്ടിനു കിട്ടും. അതുകൊണ്ടാണു് ഗവർമ്മെണ്ടു് ഇതിനെ എതിർക്കുവാൻ പാടില്ലെന്നു പറയുന്നതു്. തിരുവിതാംകൂറിൽ കാർഷികാശ്വാസ ബിൽ പാസാക്കിയപ്പോൾതന്നെ കടംവാങ്ങി കൊടുത്തു തീർക്കുവാനുള്ള കാലാവധി വർദ്ധിപ്പിച്ചിട്ടുണ്ടു്. ഇവിടത്തെ കാർഷികാശ്വാസബിൽ പ്രകാരം ഒരു കൊല്ലത്തെ കാലാവധി മാത്രമെ ഉണ്ടായിരുന്നുള്ളു. പണം കടം കൊടുക്കുന്നവനു് പണം കിട്ടിയാൽമതി, ഇൻസ്റ്റാൾമെൻറ് പേയ്മെൻറ് ആക്കുന്നതുകൊണ്ടു് യാതൊന്നും വ്യസനിക്കുവാനില്ല. അതുകൊണ്ടു് ഈ പ്രമേയത്തെ ഇതു ശക്തിയെന്നു പറയുവാൻ വയ്യാത്തതു ശക്തിയോടുകൂടി ഞാൻ പിൻതാങ്ങുന്നു.

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Mr. K. M. Ibrahim *(Cranganur):* I support the motion. The arguments in favour of the proposition have already been thrashed on the floor of this House and there is no useful purpose served by my making long speech. My only purpose is to show that there is a wrong notion prevalent especially among the official blocks that they have done already too much for the relief of the agriculturists. The point has already been mooted by the other side that revolutionary steps have already been taken by the Government, when compared with the statistics outside and that much has not been left undone. My only purpose is to show that when compared with what has been done outside, what we have done is only very negligible. The present proposition has been mooted on the plea that the depression has wrought untold miseries to the agriculturists of the State and as a relief measure, some more time may be given to the agricultural debtors of the country. When compared with the gigantic propositions that have been handled to meet the agricultural indebtedness in other countries, my submission is that our present demand is a very conservative request. Just to show what all has been done around us, I will now attempt only a few citations. I am now, Sir, quoting from the report of the League of Nations and they are just giving an account of the measures that have been attempted in some States: "The following were the methods adopted for the repayment of debts by debtors after the depression in the Danubian and Baltic States of Europe (Vide *Monthly Bulletin Agricultural Economics and Sociology,* Read 1937 Vols. 1 to 4 and *Report of Systems of Agricultural Credit and Insurance* by League of Nations —II Economic and Financial 11 A, 24, 1938).

In most of the States of S. E. Europe a moratorium for 5 or 6 years was declared from the year 1932.

The schemes have varied in different countries according to the character of the rural credit system. Where farmers have not kept proper accounts, and debts accumulated rapidly and could not be repaid owing to the un-economic character of the holdings, the debts required to be investigated. This happened in the Danubian States. Consequently legislation in these States had to provide for composition of debts. The principal amount too had to be reduced in these countries. In countries where banking organizations are sufficiently developed legislation has taken the form of providing for longer periods for old loans at a lower rate of interest (U.S. A.)".

The example of United States is quite in line with the agitation the House has heen carrying on incessantly for long instalments. "Where agricultural charges have exceeded the income owing to fall in price and not due to other causes, the debt was determined at a

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lower rate of interest. Final moratorium was granted to the land holders in certain countries to prevent selling of their holdings".

Only one aspect I want to stress in this citation. I do not go to the heights of quoting the glorious examples of our great allies, the Soviet in this connection. I am confining myself to a less ambitious task of quoting the examples of countries of a capitalistic character. I pray that some of these measures may be viewed in their relation to our State. I mention instances of two countries only of a capitalistic type in this connection.

"In Rumania a debt conciliation measure was adopted by the law of 7th April 1935. The object of the measure was to arrange for quick repayments. The maximum reduction that was allowed in scaling down debts was 50 per cent of the amount determined as due". Comparatively what we have already done or we are trying to do cannot be said to be "himalayan" affairs. Our record is poor even when compared to Madras or Travancore. "A creditor might refuse to consent to this reduction". If a creditor refuses to consent to this reduction, what is the penalty ? " In such a case he could not sue for his debts for a period of ten years and even in some cases for 15 years". I wonder whether measures like this may suspend one's breath in a country like ours where the moment any palliative measure is suggested, vested interests howl "the credit machinery will go to dogs". "Interest was allowed at 1 per cent on the initial capital". Here is another instance of instalment payment. "Where the creditors agreed, the reduced amount was to be paid in 17 half-yearly instalments". Of course, there is no imminent necessity to go in for this authority when we have got the instance of Travancore in our very neighbourhood. Neverthless, multiplicity may be stronger. "The payment of the earlier instalments was made easy by the provision that the minimum to be repaid for the first two instalments was 2½ per cent of the settled debt, and for the next two instalmets 3 per cent of the settled debt.

If fifteen per cent of the amount was paid every year for 2 years, the balance would be struck off. If 8 per cent of the amount was paid every year for 5 years, the balance would be equally struck off. Advance payments of instalments would carry 6 per cent interest. The debtor might apply for a loan to the Agricultural Mortgage Credit Bank and repay the instalments.

In Bulgaria debts up to a certain figure were reduced by 4 per cent while only interest was reduced in the case of debts below the prescribed figure. Moratorium was granted up to 15 years for the former class of debts and six years for the latter. The State undertook to indemnify creditors. An Amortisation Fund was created

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which issued 3% bonds repayable in 23 years, with which the creditors were paid off. (Law of 7—8—34).

I am making this citation just to show that what we have already done and what we request the Government to do at present is a very moderate thing. I request the Government to re-consider their position and accept this resolution.

Mr. Puthur Achyuta Menon *(Kattur):* Sir, when I moved this resolution I never suspected that the Government will oppose this progressive measure either on principle or policy. Sir, the Hon'ble Member for Vadakkancheri and so many others were speaking about this resolution without knowing what the real significance of this resolution is. I am certain that the Advocate-General may have understood it because he was using a novel sort of argument to meet this resolution. My purpose in moving this resolution is to see that every agriculturist is given a chance to see whether he can pay the debt before his properties are proceeded against.

Sir, what is the resolution? It is a very simple thing. That is, if a man has to pay Rs. 100 secured on some property he must be allowed to put in a petition when a suit is pending against him in court and ask the permission of the court to allow him to pay off the debt in 15, 20, 5 or 6 instalments as the court decides. Even in the case of unsecured debts if it is for Rs. 100 the court will consider what is the real amount that the debtor can pay to the creditor every month. It is after taking evidence, if necessary, that the court decides that such and such an amount should be paid every month. He is allowed to pay the debt in 15 or even 20 or 24 instalments. My purpose, Sir, is if a case is pending against one debtor if he puts in a petition he must be given the chance to repay the debt in so many instalments. Even in my opening speech I submitted that there is no difficulty in the court providing an acceleration clause, *i.e.*, making a stipulation that if he defaults one instalment the whole money becomes due. It is said that this will adversely affect the puisne mortgagees. I wonder how that argument can be used against this resolution. If a man makes regular payments it is the security of the puisne mortgagee that increases.

Now coming to the other thing, *viz.*, that the mortgagee looks to the property, I admit that. But the mortgagee is not prejudiced by this sort of legislation. His security increases every month. Out of Rs. 100 if a man makes a payment of Rs. 10 for Rs. 90 there is the security of Rs. 100. My humble submission is this. This is a piece of legislation which will not affect the creditor in any way. At the same time this is a resolution which will help him to secure his money and at the same time help the debtor considerably.

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Mr. K. Kochukunhan Kaimal *(Vadakkancheri):* Suppose he is not at all in a position to repay except by disposal of his property?

Mr. Puthur Achyuta Menon *(Kattur):* It is not the look out of the creditor to see whether he can pay or not. It is highly necessary to understand what the principle of the resolution is. The principle is suppose the debt is for Rs. 100. The properties are after three or four months proceeded against. He is never given the chance to see whether he can repay the debt. He may not be in a position to pay in a lump. Those who have some relation with the court know that a petition and a sale proclamation or an execution is a very expensive thing. For Rs. 100 when the property comes up for sale the debtor has to pay Rs. 300 or Rs. 400. That is every proclamation costs him Rs. 20, Rs 30 or Rs. 35. A debt of Rs. 100 when the time of repayment comes becomes Rs. 300 or Rs. 400. My humble prayer is he must be given a chance to see whether he can repay the debt before incurring these expenses. That is the only purpose of the resolution. The credit system is not affected. The creditor is not affected. At the same time the debtor is relieved. It is for this purpose that the resolution is moved. I am certain that the arguments of the Government may not be real reason why the Government and some non-officials object to this resolution. My humble submission is that this is the one thing which will without affecting anybody, without affecting any credit system and without doing any harm to the Government or anybody else give substantial relief to the debtors. My humble submission is that the Government must reconsider the position of the Government and do something for the poor agriculturists of the State. With these few words I press this resolution for the acceptance of the House.

Resolution put and carried

RESOLUTION No. 10

Protection of Southern Cochin from sea erosion

"This Council recommends to the Government to urgently expedite the works already begun to protect the shores of Southern Cochin from sea erosion."

മിസ്റ്റർ ബി. എം. പീറർ: ഞാൻ ഈ പ്രമേയം ഇവിടെ അവതരിപ്പിക്കുന്നില്ല. പക്ഷെ ഈ വിഷയത്തിലുള്ള ഗവൺമെണ്ടിന്റെ മഹാമനസ്കതക്ക് നന്ദി പറയുവാനായിട്ട് രണ്ടുവാക്ക് പറഞ്ഞുകൊള്ളുന്നു. ഇതു് അടിയന്തിരാവശ്യമാണെന്നുള്ളതു് ഗവൺമെണ്ടു് സ്വീകരിച്ചിരിക്കുന്ന ഇന്നത്തെ നയംകൊണ്ടുതന്നെ ഏതാണ്ടു് മനസ്സിലാക്കുവാൻ സാധിക്കും. ആ പ്രദേശത്തിൽ കടലാക്രമണം തുടങ്ങീട്ടു് ഏകദേശം സു 0 കൊല്ലത്തോളമായി. അതിനെപ്പറ്റി ഈ സഭയിൽത

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